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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,942	05/16/2001	Michael Sachs	2633.1	1439

5514 7590 11/06/2002

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EXAMINER

MATHEW, FENN C

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/855,942

Applicant(s)

SACHS, MICHAEL

Examiner

Fenn Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 13, 14, 16, 18-20 and 33-41 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 1-3, 13, 14, 16, 18-20 and 33-41 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

This action is responsive to communications filed on August 16, 2002. As directed by the applicant, Species II has been chosen without traverse encompassing claims 1-3, 13-14, 16, 18-20, and 33-41.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Prescott. Referring to claim 1, Prescott discloses an implant (40) having a connector element the connector implant including a male connector element. (See fig. 6).
3. Referring to claim 2, Prescott discloses a surgically implantable augment (40) having a male connector element, wherein the male connector element can be snappingly attached to a female connector element. (See fig. 6).
4. Referring to claim 3, Prescott discloses a surgically implantable augment that is a button.
5. Referring to claim 20, Prescott discloses a surgically-implantable connector system that includes a female connector element and a male connector element, the male and female connector elements being respectively shaped such as to be snappingly attachable to each other (see fig. 6).

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6. Claims 13-14, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Synthes Maxillofacial (as provided in IDS). Referring to claim 13, the document discloses a strut (24) having a connector element having male and female connector elements shaped as to be snappingly attached (inherently a large enough male connector would have to be snapped into place). (See pg. 1-40).
7. Referring to claim 14, Synthes Maxillofacial discloses a strut with a female connector element.
8. Referring to claim 16, Synthes Maxillofacial discloses a strut with a plain hole.
9. Referring to claim 18, Synthes Maxillofacial discloses a strut with a female connector element (pg. 1-40) and a portion not having a connector element.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 19, 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prescott (U.S. Patent No. 5,728,157). Referring to claim 19 Prescott discloses an implant (40) having a connector element the connector implant including a male connector element (see fig. 6) capable of being snappingly attached to a female connector. Prescott does not disclose the implant as part of a surgical kit, however, it would have been obvious to one having ordinary skill in the art at the time of invention

to have the implant as part of a kit, since inherently implants must be sold as part of a surgical kit in order to have packaging to house the implant prior to sale.

12. Referring to claim 33, Prescott discloses a first implant having a first connector element, and a second implant having a second connector element, the first and second connector elements being adapted to engage each other in such a manner as to secure themselves together. Prescott does not disclose the implant as part of a surgical kit, however, it would have been obvious to one having ordinary skill in the art at the time of invention to have the implant as part of a kit, since inherently implants must be sold as part of a surgical kit in order to have packaging to house the implant prior to sale.

13. Referring to claim 34, Prescott discloses the first and second connector element shaped to fit together in mechanical engagement.

14. Referring to claim 35, Prescott discloses the first and second connector elements shaped to fit together snappingly.

15. Referring to claim 36, Prescott discloses first and second connector elements having sufficient resilience to permit the connector elements to be fitted together into mechanical engagement.

16. Referring to claim 37, Prescott inherently discloses a second connector element with sufficient resilience.

17. Referring to claim 39, Prescott discloses a kit wherein the first connector element has resilience.

18. Referring to claim 40, Prescott discloses the first connector element having portions spaced apart from each other which can be squeezed together to bring the first

and second connector elements into mechanical engagement with each other. (See fig. 6).

19. Referring to claim 41, Prescott discloses round first and second connector elements.

20. Referring to claim 42, the feature of having the connector elements approximately polygonal is a matter of obvious design choice to one with ordinary skill in the art since no advantage is gained nor unexpected results attained in the configuration disclosed by Prescott.

21. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prescott (U.S. Patent No. 5,728,157) as applied to claim 36 above, and further in view of Prescott (U.S. Patent No. 5,061,280). Prescott ('157) discloses the claimed invention except for a notch. Prescott ('280) teaches use of a notch (column 5, lines 27-33). It would have been obvious to one having ordinary skill in the art at the time of invention to provide the implant of ('157) with the notch as taught by ('280) in order to provide means for the male element to be snapped into the female connector element.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Black	U.S. Patent No. 4,597,764
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Shikani	U.S. Patent No. 5,246,455
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Berrang et al.	U.S. Patent No. 6,358,281
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Bushek et al.

U.S. Patent No. 6,325,755

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



**NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700**

Ycm

fcm

November 4, 2002